

RULES OF THE CITY OF COLUMBIA, MISSOURI BOARD OF ADJUSTMENT

RESOLUTION

***BE IT RESOLVED THAT THE FOLLOWING RULES ARE
HEREBY APPROVED AND ADOPTED AS THE OFFICIAL
RULES OF THE BOARD OF ADJUSTMENT:***

GENERAL

This has been prepared by the Board of Adjustment to aid any citizen in deciding whether he/she has a basis for an appeal to the Board. These rules are not intended to replace the zoning ordinance, and in cases where there may be a conflict, the zoning ordinance will prevail. Before making an application or filing an appeal with the Board, the citizen should avail himself/herself of the information and provisions contained in the current zoning ordinance. If a citizen is unclear as to whether the powers of the Board are applicable, consultation with an attorney may be appropriate.

REASONS FOR APPEAL TO THE BOARD

Three types of appeals may be made to the Board. First, the Board is authorized to overturn decisions of any official or employee of the City where error is alleged and proven in the interpretation or enforcement of the zoning ordinance. Second, the Board may grant variances from the strict letter of the zoning ordinance provided that practical difficulty or unnecessary hardship exists and is proven and as long as the variance does not defeat the spirit and intent of the zoning ordinance. Third, applications may be made to the Board in those cases where the zoning ordinance specifically provides that the Board shall render a decision on the matter.

POWERS OF THE BOARD

In the case of an appeal from a decision or an order of an official or employee of the City where a citizen alleges that such decision or order was in error, the Board may reverse, affirm or modify such order.

In cases where a citizen makes application for a variance from the strict application of the provisions of the zoning ordinance, the Board may permit such variance only when it finds there is practical difficulty or unnecessary hardship in connection with a specific piece of property which has not been self-imposed, is due to unique characteristics of the land and not common to surrounding properties. In the passing upon all variances, the Board must find that by granting the variance substantial justice will be done, the public safety and

welfare will be preserved and the viability of the zoning ordinance as a whole will be protected.

In cases where a citizen makes application for a conditional use permit, the Board may grant such a permit when it finds the proposed conditional use is in compliance with all regulations of the applicable zoning district and will be in conformance with the character of the adjacent area, within the same zoning district, in which it is located. In addition, off-street parking and loading areas are provided in accordance with the standards set forth in the ordinances, adequate utilities, drainage and other such facilities are provided, and adequate access is provided and is designed to prevent traffic hazards and minimize traffic congestion. Approval and issuance of such permit shall not be deemed to relieve the applicant of the duty to comply with the provisions of other laws and ordinances. The Board may also stipulate any conditions deemed necessary.

MEMBERS OF THE BOARD

There shall be five regular members and three alternate members of the Board who shall be appointed by the Mayor and City Council, and who shall have such qualifications as are required by the zoning ordinance. The three alternate members shall serve in the absence or disqualification of regular members. Each member serves a term of five years without pay and shall serve until they have resigned, been replaced or removed, but the Board shall not have the right to remove or replace its members.

OFFICERS OF THE BOARD

CHAIR: The Chair of the Board shall be elected by a majority of the members. The term of office will be for one year or until another member is elected Chair. The Chair will preside at all meetings of the Board, except as hereinafter provided. The Chair will also sign all official notices and certificates, call special meetings and represent the Board in official or unofficial capacities as the need arises.

VICE-CHAIR: The Vice-Chair shall be elected by a majority of the members. The term of office will be for one year or until another member is elected Vice-Chair. The Vice-Chair shall assume the duties of the Chair whenever the Chair is unable to perform such duties or whenever this member disqualifies himself/herself.

TIME OF ELECTION: Elected officers shall be elected at the next regular meeting of the Board after the time when any one of the elected officers has ceased to be a member of the Board or, when the regular term of the elected officer has come to an end.

TEMPORARY CHAIR: Whenever a meeting is called and neither the Chair nor Vice-Chair is present at the appointed time, any member may serve as a Temporary Chair, without election other than by the members present. For the purposes of that meeting, such Temporary Chair shall have all of the powers and duties of the Chair. If a quorum is not present, such Temporary Chair shall have no power except to open the meeting, determine who is present, adjourn the meeting, and later certify that such meeting was held and that

the matters scheduled to come before the Board were postponed due to the fact a quorum was not present.

SECRETARY: The Secretary of the Board shall be the City Clerk or, in the case of the inability of the City Clerk to serve, any deputy of the City Clerk. The Secretary shall maintain a supply of the various blank forms, informational material, zoning ordinances or other material used by or pertaining to the Board; distribute the forms necessary to file an application to those persons requiring them; receive notices given to the Board by others; receive notices of application or appeal; arrange for the proper advertising of hearings before the Board; notify parties in interest of hearings; notify the members of the Board of all meetings of the Board or any other matter addressed to the Board; prepare and distribute minutes of Board meetings to all of the members of the Board; arrange for the presence of a court reporter qualified to record the minutes of all meetings; swear in all persons to be heard under sworn testimony at meetings or hearings; have custody of all minutes and records of the Board and make same available to any person wishing to see them during regular office hours.

OFFICE OF THE BOARD

The Office of the Board shall be the Office of the City Clerk.

Permanent records of past matters and matters pending before the Board shall be kept at its office and shall be available to anyone who wishes to inspect them, but no permanent record shall be taken from the Office of the Board.

The Office of the Board shall be open for business during the regular working days and hours of the Office of the City Clerk.

TIME AND PLACE OF MEETINGS OF THE BOARD

The Board shall conduct its regular meetings at 7:00 p.m. on the second Tuesday of every month at City Hall at 701 E. Broadway. Meetings will be held in the Council Chamber, except when it is unavailable. When it is unavailable, meetings will be held at another date, time or place as decided by the Board. The Board may call a meeting or hold a hearing on any other date or at any other time. Legal notice, pursuant to the Revised Statutes of the State of Missouri, will be given of all meetings. No meeting shall be held when there is no business to come before the Board. A quorum of four members is necessary for a meeting to be held.

CONTINUED MEETINGS: When a case before the Board has not been brought to its conclusion before adjournment, a continuance will be announced by the Chair and the case will be continued to a subsequent meeting.

POSTPONEMENT OF MEETINGS: When a meeting is scheduled, but there is no quorum, the meeting shall be rescheduled to the next regular meeting date. The Chair

shall immediately set and announce the date to those in attendance. Such postponed meetings will be considered informal, but minutes shall be taken and kept by the Secretary.

When a hearing is proceeding in the usual manner and the person making the application or appeal to the Board is found to not be present at the hearing, the Board may continue the hearing or dismiss the application or appeal by vote of a majority of the members of the Board.

OPTIONAL CONTINUED HEARINGS: When a meeting is scheduled to be held, and there is a quorum of only four members, any applicant or appellant may request that the hearing for his/her application or appeal be continued and the Chair shall grant such continuance. The Chair shall, in all cases where the fifth member of the Board is not present, inform all applicants or appellants who are present at the meeting of this option. In the case of such a continuance, the continuance shall be announced by the Chair and the case shall be continued to the next regular meeting of the Board.

SPECIAL MEETINGS: Special meetings may be called by the Chair and may be held at any time and place. Such meetings shall be called only if a real need exists. There shall be no waiver of the usual preliminary actions required to initiate a meeting of the Board, nor any relaxation of the rules pertaining to a meeting of the Board. Legal notice, pursuant to the Revised Statutes of the State of Missouri, will be given of all special meetings.

APPLICATIONS AND APPEALS TO THE BOARD

A notice of appeal shall be filed with the Secretary of the Board and a copy of such notice must be filed with the person from whom the appeal is taken. The person from whom the appeal is taken shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken.

A notice of application for a variance or for a conditional use permit shall be filed with the Secretary of the Board.

All notices shall be signed by the owner of the property in question, or by this person's duly authorized representative, and shall be on forms supplied by the Secretary.

If the owner of record (per the Boone County Assessor's Office) is:

- an individual, he or she can sign;
- a partnership, a partner can sign; and
- in joint ownership, a joint owner can sign.

Any other type of ownership, to include but not limited to a corporation or limited liability company, requires the signature of a duly qualified and authorized attorney at law licensed in the State of Missouri.

In addition, all notices must be accompanied a filing fee, a list of parties in interest and their addresses, a letter of denial from the City (if applicable), and a site plan (if applicable).

The original copy of the application or appeal shall be filed and will become a part of the permanent record of the Board. Duplicates shall be provided to members of the Board.

The Secretary of the Board shall inform all applicants and appellants of the number of copies of any pertinent plats or other pertinent documents that are to be submitted with the application or appeal, if said documents cannot be easily duplicated with existing photocopy equipment. Up to twelve copies could be required to ensure each member of the Board and pertinent staff receive a copy.

The Secretary of the Board is to inform all applicants or appellants that exhibits may be used in the hearing before the Board, but that such exhibits are to be considered expendable since they will become a part of the records of the Board. Such exhibits may include drawings, writings, photographs or other such documents, if pertinent to the hearing. Exhibits should be capable of being filed and should pertain to the case for which exhibited.

Applications or appeals for variances must be filed not later than 12:00 p.m. (noon) on Tuesday three weeks prior to the Tuesday set for a regular meeting of the Board at which the application or appeal is expected to be heard. If the Office of the Board is closed on that Tuesday due to a holiday, applications and appeals for variances must be filed not later than 12:00 p.m. (noon) on the Monday prior to the Tuesday that is three weeks prior to the Tuesday set for the regular meeting of the Board at which the application or appeal is expected to be heard.

Applications for conditional use permits must be filed not later than 12:00 p.m. (noon) on the second Tuesday of the month prior to the regular meeting of the Board at which the application or appeal is expected to be heard.

TIME FOR APPEAL

Persons wishing to be heard by the Board, relative to an appeal from any order, requirement, decision or determination of any administrative official of the City of Columbia, shall file the notice of appeal with the Secretary within 90 days after the date of such order, requirement, decision or determination. Said 90 days is hereby established by the Board to be reasonable time in which such appeals may be taken.

FILING FEE FOR APPLICATIONS OR APPEALS

All applications or appeals shall be accompanied by a deposit payable to the City of Columbia to cover the cost of advertising the public hearing. If the cost of advertising is less than the deposit, the remainder will be returned to the applicant or appellant. If the cost of advertising is more than the deposit, the applicant or appellant will be asked to provide the difference.

PARTIES IN INTEREST

All applications or appeals shall be accompanied by a list of "Parties in Interest" (all property owners within 185 feet of the subject tract), and their addresses. This should be determined by drawing lines parallel to and 185 feet from the subject tract.

NOTICE OF HEARING ON APPLICATIONS OR APPEALS

A notice of hearing for appeals or variance applications shall be published one time in a newspaper of general circulation in the City of Columbia, Missouri. The publication shall be at least seven days prior to the date set for the hearing by the Board. Notice of the hearing shall include a legal description.

A notice of hearing on conditional use permit applications shall be published one time in a newspaper of general circulation in the City of Columbia, Missouri. The publication shall be at least fifteen days prior to the date set for the hearing by the Board. Notice of hearing shall include a map and legal description.

Such notice shall serve as notice to the public that a public hearing is to be held and shall contain all information relative to such hearing, such as date, time, place, purpose of hearing, description of land area involved and the name of applicant or appellant.

The Secretary shall arrange for such notice and shall obtain an affidavit from the publisher of such notice that such notice did appear in publication. Such affidavit shall include the name of the newspaper, the date of publication and the notice as published. The affidavit shall become a part of the record of the application or appeal pertaining thereto.

If an item is continued more than three times, a notice must be published in a newspaper of general circulation in the City of Columbia, Missouri, again. Therefore, the applicant or appellant must provide another deposit payable to the City of Columbia to cover the cost of re-advertising the public hearing.

APPLICATIONS INVOLVING SITING, CONSTRUCTION OR MODIFICATION OF COMMUNICATIONS TOWERS OR DISGUISED SUPPORT STRUCTURES FOR PERSONAL WIRELESS COMMUNICATION

The Board shall act upon applications to site or construct a communications tower or a disguised support structure for personal wireless communications facilities within 150 days of the applicant filing the application with the Secretary of the Board. The Board shall act upon applications to modify or co-locate facilities on a communications tower or a disguised support structure within ninety days of the applicant filing the application with the Secretary of the Board. Nothing in this rule shall prevent a different time period if both the applicant and City staff agree to a longer time for acting on the application.

MEETINGS OF THE BOARD

Meetings of the Board shall be presided over by the Chair (or the Vice-Chair in absence of the Chair or the Temporary Chair in absence of the Chair and Vice-Chair). The Chair shall open the meeting at the appointed time.

The Secretary shall call the roll.

Four (4) members of the Board being present shall constitute a quorum.

The Chair will ask for approval or correction of the minutes of the immediately preceding meeting or meetings. Such minutes will then be entered into the record of the Board.

The hearing of the cases shall be in the order of sequence of filing as indicated by the case numbers assigned to each case. Also, postponed or continued cases will be heard first.

For each case, the following order will prevail:

The Chair will read the notice of public hearing and determine the notice of public hearing has been properly advertised, the pertinent property was posted with a notice of public hearing, and the parties in interest were properly notified of the hearing.

The person making the appeal or application to the Board will be asked to appear before the Board to testify on the matter to be heard. The Chair will ask other persons in favor of the Board granting the appeal or application request to come forward to be heard. The Chair will then ask persons opposed to the Board granting the appeal or application request to come forward to be heard. All persons who appear to be heard by the Board are required to be sworn to tell the truth and will be asked to give their name and address before being heard. Such persons may then give such facts or statements as they deem pertinent to the matter before the Board. All remarks, questions or testimony shall be directed to the Board and not to other persons who may be present at the hearing. Unsworn persons may not give testimony. Since the testimony of opponents may give proponents cause to speak after all opponents have spoken, a period of time can be allotted for once-heard proponents, once-heard opponent or possible late comers to be heard at the discretion of the Chair. The Board may ask questions of those persons appearing before the Board at any time.

When all persons present have been heard to the satisfaction of the Board, the public hearing portion of the meeting will be declared closed by the Chair. The Board may then ask for comments from staff, make a motion and call for a vote of its members as to whether the appeal or application before the Board shall be granted or denied. Each vote will be publicly held and recorded. Four (4) positive votes shall be required to grant in favor of an appeal or application. Any less than four positive votes shall be reason for denial. It is normal, but not mandatory for the Board to render a decision the same night that an appeal or application is heard.

When the Board lacks a sufficient number of members at a meeting to form a quorum, the matters before the Board shall be continued.

When the hearing before the Board, of an application or appeal, does not provide sufficient information for the Board to make a decision, the Board, by majority vote of the members present, may continue the hearing and such hearing will be continued to the next succeeding regular meeting of the Board.

When an application or appeal is being heard, and the hour becomes so late as to cause reason for termination of the meeting, the application or appeal then being heard, and any application or appeal yet to be heard at the meeting, shall, by majority vote of the members present, be continued and the Chair shall immediately set and announce a rescheduled date for the hearing of such continued applications or appeals.

REPRESENTATION:

The owner of record of the property in question at the hearing before the Board or the owner's duly authorized attorney at law licensed in the State of Missouri must appear to be heard. If the owner is an individual, this person may represent himself/herself. If the owner is a partnership, a partner may represent the partnership. If the property is held in joint ownership, any of the joint owners may appear. If the owner is other than an individual, a partnership, or a joint tenancy, the owner must be represented by a duly qualified and authorized attorney at law licensed in the State of Missouri.

Any person may testify before the Board with regard to the matter being heard.

All persons appearing before the Board shall be sworn in before being heard by the Board.

Any party to the hearing shall have a right to examine a witness while that witness is being heard by the Board if said party stands and is recognized by the Chair. All other remarks, questions or testimony shall be directed to the Board and not to other persons who may be present at the hearing.

CONFLICT OF INTEREST OF BOARD MEMBER(S)

Where there is a possible conflict between the interests of a member of the Board and an application, appeal, applicant or appellant before the Board, the Board member bearing the possible conflict shall disqualify himself/herself and elect not to hear or decide on such application or appeal, subject to the following:

Disqualification shall be the duty of the Board member who has the possible conflict of interest and no other person shall have the right to disqualify a member of the Board on account of a possible conflict of interest.

In certain situations, a member of the Board is automatically disqualified by statute (Section 105.464). First, the Board member must disqualify himself/herself if a relative or a

company in which this person has a financial interest is party to the Board of Adjustment proceeding. Second, the Board member must disqualify himself/herself if this person may receive a financial gain from any result of the proceeding.

Where there is an apparent conflict of interest, the Chair shall inform all persons assembled at the meeting that there is a possible conflict of interest in the matter to be heard, that four votes in favor of an application or appeal are necessary in order for the Board to grant in favor of such application or appeal and that there is a greater chance of obtaining said four favorable votes when there are five members present at the meeting and eligible to vote than when only four members are present and eligible to vote.

If a Board member is aware of a conflict in advance, he/she may contact the City Clerk's Office and request an alternate member attend in his/her place.

RECORD OF MEETINGS

A court reporter will record all events occurring in meetings and the same will be transcribed if the case is appealed to the Circuit Court at the cost of the appealing party. Otherwise, the City Clerk will prepare the minutes of the meetings for the public record.

The Board shall keep minutes of its proceedings, showing the vote of each member upon each question or who is absent or failing to vote. The Board shall also keep records of its examinations and other official actions. All shall be filed in the Office of the Board and shall be a public record.

CERTIFICATE OF DECISION

A certificate of decision will be given by the Secretary to each appellant or applicant whose appeal or application was granted.

The Secretary of the Board shall inform recipients of those certificates of decision that it is their obligation and responsibility to have such certificates recorded.

MISCELLANEOUS

Once a decision is made by the Board, the exact same case will not be heard again, except under highly unusual circumstances and then only by a vote of four or more members of the Board. The Board will attempt to preserve public safety and welfare at all times. Matters decided on are not reviewable by the City Council, except that a new ordinance may revise or replace an old ordinance.

In the event that any party believes that the decision of the Board is unfair or illegal, such party has recourse through the courts.

An appellant or applicant may withdraw his appeal or application at any point up to the actual vote by the Board. In such cases, the appellant will be granted a "no prejudice"

withdrawal and is then not prohibited from applying anew. In such cases, advanced costs will not be returned to the appellant or applicant.

ACCEPTANCE OF ZONING ORDINANCE

The Board shall accept the zoning ordinance of the City of Columbia as it finds it and in no way shall attempt to hold it invalid or repeal it, either in whole or in part.

Where the Board finds that it is not sufficiently competent to interpret the true meaning of the zoning ordinance, the Board shall request an opinion from the City Counselor for purposes of clarification or interpretation.

NEW RULES

The Board may, by unanimous vote of the entire Board, modify, change, add to or repeal any of the rules herein written, but such modification, change, addition, or repeal shall comply in all respects to existing laws and ordinances.

The Secretary shall notify all members of the Board of any proposed change in rules or proposed new rule at least seven days prior to the meeting at which such changes or new rules shall be considered and shall at that time furnish each member with a copy of such proposed rules change or new rules.

Any changes in rules will be kept as a record by the Secretary.

COPIES OF RULES

The official copy of these rules shall be kept on file in the Office of the Board.

A copy of these rules shall be kept in the Office of Board for use by any member of the public.

Copies shall be made available for sale to the public at a price to be determined by the Secretary of the Board which shall cover the cost of duplication.

RECORDS

The transcript of any proceeding before the Board and all papers and documents relating to the proceeding or introduced in evidence shall be preserved as records of the Board.

Such papers or documents shall include, but are not limited to, appeals as filed, applications as filed, letters of denial, notices of appeal, notices of public hearing, minutes of meetings of the Board, rules of the Board, zoning ordinances, letters to and from the Board, letters to parties in interest, certificates of decisions, opinions of the City Counselor rendered for the Board or affecting the Board, exhibits given to the Board and copies of forms used by the Board.

The Secretary shall make such records available to any person requesting same, but shall not allow such records to be removed from the Office of the Board.

The Secretary shall duplicate the minutes of proceedings before the Board, or any part thereof, or any paper or document thereof, if same can be duplicated with existing equipment, for any person requesting same, but shall charge the cost of such duplication to the person requesting same.

NOTICES AND FORMS

The following notices and forms shall be used in connection with notices to, and actions of, the Board. Copies of each are included herein and made a part of these rules.

NOTICE OF APPEAL TO BOARD OF ADJUSTMENT FROM A DECISION MADE BY AN OFFICIAL OF THE CITY OF COLUMBIA. This form should be used in connection with a decision given to the appellant by an official of the City of Columbia, Missouri.

NOTICE OF APPLICATION TO THE BOARD OF ADJUSTMENT FOR A VARIANCE. This form should be used when requesting a variance from the strict letter of the zoning ordinance because of practical difficulties or unnecessary hardship.

NOTICE OF APPLICATION TO THE BOARD OF ADJUSTMENT FOR CONDITIONAL USE PERMIT. This form should be used when requesting the Board grant a Conditional Use Permit as allowed by the zoning ordinances of the City of Columbia, Missouri.

NOTICE OF PUBLIC HEARING BEFORE BOARD OF ADJUSTMENT RELATIVE TO A DECISION MADE BY AN OFFICIAL OF THE CITY OF COLUMBIA OR FOR A VARIANCE. This form is used for publication.

NOTICE OF PUBLIC HEARING BEFORE BOARD OF ADJUSTMENT (CONDITIONAL USE PERMIT) RELATIVE TO AN APPLICATION FOR PERMIT MADE DIRECT TO THE BOARD OF ADJUSTMENT. This form is used for publication.

LETTER OF NOTICE TO PARTIES IN INTEREST. This form is used to notify parties in interest of hearing which may be of interest to them.

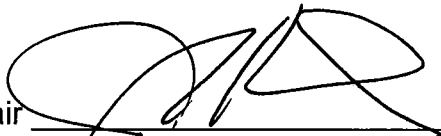
CERTIFICATE OF DECISION. Used to certify all decisions of the Board where decision favoring an applicant or appellant has been made by the Board, except granting a Conditional Use Permit.

CERTIFICATE OF DECISION GRANTING A CONDITIONAL USE PERMIT. Used to certify decision of the Board after a favorable decision by the Board has been granted for a Conditional Use Permit.

REPEAL OF PRIOR RULES OF THE BOARD

All prior rules made by the Board are hereby repealed, declared invalid and shall be replaced with the rules hereby adopted.

ADOPTED this 9th day of March, 2010.

Chair 
John Hancock

ATTEST:

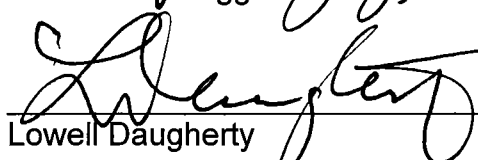
Secretary 
Sheela Amin

MEMBERS:


David Townsend


Rex Campbell


Dennis Hazelrigg


Lowell Daugherty